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September 24, 1997

William F. Caton  
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Washington, DC 20554

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RE: CC Docket No. 96-45; DA 97-1957 - In the Matter of  
Federal-State Joint Board on Universal Service

Dear Secretary Caton:

Enclosed for filing please find an original and four (4) copies of the comments of the New York State Department of Public Service submitted in the above-captioned matter.

In addition, eight copies of the comments are being provided to Ms. Sheryl Todd of the Universal Service Branch and one copy is being sent to the Commission's document contractor, ITS.

Thank you.

Sincerely,

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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of  
Federal-State Joint Board on  
Universal Service

)  
) CC Docket No. 96-45  
) DA 97-1957  
)

**COMMENTS OF THE  
NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE  
AND THE NEW YORK STATE EDUCATION DEPARTMENT**

Dated: September 25, 1997  
Albany, New York

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
 ) CC Docket No. 96-45  
Federal-State Joint Board on ) DA 97-1957  
Universal Service )

INTRODUCTION AND SUMMARY

The New York State Department of Public Service (NYDPS) and the New York State Education Department (NYSED) submit these comments in response to the Federal Communication Commission's Public Notice (Notice) in the above-captioned matter, released on September 10, 1997. In the Notice, the Federal Communication Commission (the Commission) requests comment on several issues involving the distribution of universal service support to schools, libraries and rural health care providers and on the E-Rate Implementation Working Group proposal for allocating support to individual institutions that apply for funds on an aggregated basis.

The NYDPS and NYSED welcome the opportunity to comment on these very important issues and, in sum, submit the following comments:

1. An initial "window" period of two or three weeks should be established, given the uncertainty as to when the application forms will be released and the inexperience of many of the beneficiaries in applying for this type of discount.

2. Application of the rules of priority set forth in section 54.507 of the Commission's rules to the first period expenditures should be clarified. The trigger, or set-aside amount, should be set at a pro-rata amount in relation to the first period fund amount.

3. There should be a mechanism to prioritize requests from rural health care providers, based on current participation in state or federal rural network development programs and/or on the number of persons served.

4. The Commission should adopt the proposal of the Archdiocese of New York or, in the alternative, provide for a default school discount for those schools that do not have actual poverty measures available, to enable equitable participation in the first period of the program.

I. The Commission Should Create an Initial "Window" for Filing Applications.

The Commission seeks comment on whether a "window" period should be established during which all beneficiaries filing would be given equal priority, and on the length of time any such window should remain open.

The NYDPS and NYSED recommend the establishment of an initial window, two or three weeks in duration, during which all beneficiaries submitting applications will be treated on an equal basis. Uncertainty as to when the application forms will be released and the inexperience of many of the beneficiaries in applying for this type of discount have combined to cause great

anxiety in the communities targeted by this program.

Establishing a filing period will not only alleviate much of this trepidation, but will also result in a more orderly filing process.

The creation of an initial window should also have a beneficial effect on the quality of applications received, as it will lessen the otherwise prevailing incentive to file as soon as possible, sacrificing quality and/or accuracy if necessary. The School and Library Corporation has an abundance of work to do in the start-up period without having to review incomplete or inaccurate applications, only to eventually reject them on either of these grounds.

The Commission also seeks comment on whether there should be a "rolling" or ongoing series of windows. Beyond the initial filing window, the NYDPS and NYSED believe that the program should revert to review on a first-come, first-served basis, for several reasons. First, it is very likely that many applications could be filed within a given window, but that the funding limit would be reached before all applications in the class could be funded. Besides those which would continue to be considered under the rules of priority which take effect once the priority trigger is reached, there is no procedure or basis upon which to decide between all other similarly situated applications.

In addition, establishing a series of windows could delay the evaluation process that follows the submission of the

actual application. That is, none of the applications received within a given window could be fully evaluated or approved until the window closed and all applications received within that period had been reviewed. This would introduce delay at both the administrator's end as well as at the beneficiary's end, since notification would necessarily be held up pending review of the entire pool.

II. The Rules of Priority Should Apply  
To The Initial Funding Period.

The Commission seeks comment on whether it should clarify application of the rules of priority for distributing funds to schools and libraries set forth in section 54.507 of the Commission's rules to the \$1 billion available between January 1, 1998 and June 30, 1998. The NYDPS and NYSED believe that further steps should be taken to clarify whether, and to what extent, the rules of priority set forth in section 54.507 will apply to the initial funding period.

Although there should be an amount set aside to ensure that the most economically disadvantaged schools receive some funding, the NYDPS and NYSED contend that the amount set aside for this purpose should be based on a pro-rata share of the first year fund amount. That is, since the amount specified in the rules, \$250 million, is roughly 10% of the normal \$2.25 billion fund, the reserve in the initial period should be set at 10% of the \$1 billion first period amount, or \$100 million.

Such a percentage-based formulation is consistent with the calculation of the annual reserve amount, and is also consistent with the logic behind the set-aside itself -- allowing all schools and libraries a fair opportunity to participate in the program, while ensuring that the most economically disadvantaged institutions receive at least some benefit. Setting aside too large or too small an amount for the initial period would upset the balance struck in designing the overall program, and might prevent the program from having its desired effect.

### III. A Method For Prioritizing Requests From Rural Health Care Providers Should Be Adopted.

The Commission seeks comment on whether a mechanism to prioritize requests from rural health care providers should be adopted in the event that requests exceed available funds. The NYDPS, in consultation with the New York State Department of Health, recommends that such a system for prioritizing funds be adopted and implemented, and that it be based on 1) current participation in state or federal rural network development programs, and/or 2) the number of persons served by particular providers.

Rural health care providers that already participate in rural network development programs are excellent candidates for funding through the Universal Service discount program, and should receive priority in the allocation of funds. The Federal Rural Network Development Program supports vertically integrated

health care networks in rural areas,<sup>1</sup> and selects providers that have demonstrated the need for and ability to practice telemedicine. Funds from the program are allocated, in part, to the purchase of communications equipment and to the development of network systems. These providers would therefore be able to make maximum use of all discounted telecommunications subsidized through the Universal Service program.

Similarly, there are also correlative state programs, such as the New York State Rural Health Network Development Program, that support horizontal as well as vertical networks. These horizontal networks are designed to connect similar providers with one another (connecting, for example, a network of hospitals). Again, participants in these programs would be ready to hit the ground running and maximize use of USF dollars. Since the providers chosen for participation in these programs have a demonstrated interest in telemedicine, and already have connections and equipment that permit them to communicate and share information with one another, they should be the favored recipients under any prioritization mechanism.

Any priority mechanism adopted should also endeavor to benefit the maximum number of rural persons, thus ensuring that the program confers the greatest possible benefit on the quality of health care received by rural Americans. Therefore, when selecting among several rural health care providers eligible for

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<sup>1</sup> These vertical networks include three or more providers at the individual, group and hospital level.



support, the provider or providers serving the greatest number of people in rural areas should be given funding priority. Under such a "utilization-maximization" system, the number of persons served would be added as an additional category on the applicant's certification pursuant to paragraph 726 of the Universal Service Order.

The Commission also seeks comment on whether any such priority mechanism should be permanent or should apply only in the first quarter of 1998, when collection for rural health care is limited to \$100 million. The NYDPS recommends that the mechanism be in place during the first funding period, and that it remain in effect on a permanent basis. Establishment and continuation of such a mechanism will ensure that the Administrator is prepared to decide such issues, and will also ensure that sufficient information is available to enable such a decision. Finally, the implementation of a prioritization mechanism will inject an additional measure of certainty into the application and selection process.

IV. The Commission Should Adopt an Alternative Discount Mechanism for Schools That Do Not Participate in the National School Lunch Program.

The Commission also seeks comment on whether other methods might ensure a broad and fair distribution of funds, particularly at the earliest stages of these support programs. The NYDPS and NYSED believe that this specific call for comments addresses a particularly critical issue for schools that do not participate in the national school lunch program. As the program

is currently structured, those schools participating in the national school lunch program ("participating schools") have a distinct advantage.

Many schools, both public and non-public, do not participate in the lunch program, and, as a result, do not have a readily available measure for determining their level of discount under the universal service discount program. Given the time-sensitive nature of the application process (even if the window approach is adopted) and the fact that the program is subject to a funding cap, these schools are placed at a disadvantage in the initial implementation period.

The Commission is wise to seek alternative methods to ensure a broad and fair distribution of funds with particular emphasis on the earliest stages of the programs, for it is at these early stages that built-in disadvantages would have the greatest impact. While the Commission's Universal Service Order provides alternative measures that non-participating schools may use to measure poverty, undertaking to conduct such measurements is, at the very least, an additional step not required by their participating counterparts, and at worst is a complete bar to their participation in the first period of the program. Those schools that do not maintain financial data on students' families must conduct a survey, a process that involves several time consuming steps and may not be completed prior to the release of applications.

To remedy this inequity, the NYDPS supports the Archdiocese of New York proposal that each non-public school that has a lower per-pupil expenditure than the public school district in which it is located be assigned the poverty level of that public school district. As an alternative, the NYDPS and NYSED propose that the Commission set a fair, fixed percentage discount, to be used in the initial period only, for schools that do not participate in the lunch program. Otherwise, as the program now stands, these schools are at great risk of being shut out of the first program period entirely. This is not to say that schools should not be encouraged to undertake the alternative measures set out in the Order; rather, the fixed percentage would act only as a surrogate for the first period discount for those schools that cannot conduct a survey in time, thereby enabling at least reasonable participation in the first period of the discount program.

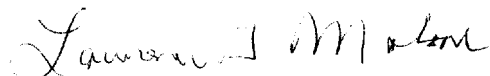
The NYDPS and NYSED suggest that the discount level for schools that do not participate in the lunch program be fixed at the 20% poverty level for the initial funding period, January 1 - June 30, 1998. Such a percentage enables fair participation in the discount program, while at the same time encouraging alternative measurements to increase the level of discount to one of the three higher categories. A 20% assumed poverty level would place these schools at the 35th percentile of schools nationwide (according to the discount matrix), and would impart a reasonable 50% urban/60% rural discount for the initial period.

Prior to the beginning of the second funding period (the first full funding year), these schools would be required to undertake one of the alternative measures specified in the Order and obtain an actual measure of economic disadvantage. Such a surrogate discount would be limited in scope and effect, and would simply allow these schools to be placed on an equal footing with their participating school counterparts in the initial application process and provide an equal opportunity for participation in the first period of the program.

#### CONCLUSION

The NYDPS and NYSED submit the foregoing proposals and urge their incorporation into the School & Library and Rural Health Care Provider Universal Service programs.

Respectfully submitted,



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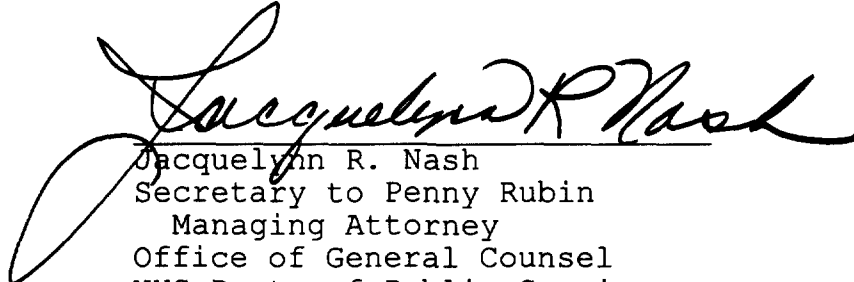
CC Docket No. 97-45  
DA 97-1957

In the Matter of  
Federal-State Joint Board on  
Universal Service

Comments of New York State  
Department of Public Service

CERTIFICATE OF SERVICE

I, Jacquelynn R. Nash, hereby certify that an original and four (4) copies of comments in the above-captioned proceeding were sent via Airborne Express to William Caton, Acting Secretary to the Federal Communications Commission. Eight copies were sent via Airborne Express to Ms. Sheryl Todd, Universal Service Branch of the Federal Communications Commission. In addition, copies were sent by First Class Mail, postage prepaid, to all parties on the attached service list.



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